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ABSTRACT

The Native American Rights Fund (NARF) is beginning a project to assist tribes and Indian communities with the legal aspects of economic and business development. Historic monopolistic and oppressive trade restrictions imposed on the tribes created an economic context that has suppressed Indian economic development for over two centuries. Faced with increasing federal reluctance to discharge its trust responsibility, the tribes recognize economic success as an essential component of true self-sufficiency. Against this backdrop, NARF has launched its Indian Economic Development Law Project. To focus its efforts and avoid duplication of services, the project has identified five areas of greatest need: (1) development of tribal governance infrastructure, (2) development of supportive future legislative and policy directions, (3) assistance in the networking of existing resources, (4) provision of a communications link between tribes and business interests, and (5) development of a large pool of legal expertise in the area of Indian economic development. NARF will be directly involved with specific tribal and Indian community efforts; clients will be selected for viability and significance. A major project role will be as facilitator of cooperation among various agencies and community organizations that cover the wide range of skills needed to accomplish economic development goals. This newsletter also contains updates on Indian court cases of interest and NARF organizational news. (SV)

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NARF Legal Review
Native American Rights Fund

# NARF Indian Economic Development Law Project Begins

The Native American Rights Fund (NARF) begins its Indian Economic Development Law Project this month. The Project is funded by a three year grant from the John D. and Catherine T. MacArthur Foundation. Initiation of the Project is the culmination of a three year effort that began with NARF's 15 year self-evaluation in the summer of 1985. The self-evaluation revealed that the lack of Indian economic development continued to be a critical national problem, and, while not within the more traditional litigation framework of NARF's focus, was nonetheless an issue that NARF should address.

Acting on this information NARF initiated an in-house Economic Development Feasibility Study to determine what role if any NARF should play in this important area. That study generated four key recommendations which set the stage for the requests for funding which led to the MacArthur Foundation grant.

Based on the funding from the MacArthur Foundation NARF recruited a director for the program. Preliminary work for scoping the Project has been completed. The emphasis of the Project is on assisting tribes and Indian communities with the legal aspects of furthering their economic and business development goals. An important part of providing that assistance is grounded in having a good understanding of the economic history of tribes and their reservation settings.

### The Destruction of Indian Economies

The invasion of America by Western Europeans brought with it the destruction of native tribal economies. A large factor in the annihilation of those economies was the reservation system created by the new government. The hunting, gathering, agrarian and trading lifestyles practiced by the Indian people of pre-Colonial America could no longer be sustained.

In addition to the eradication of their economies and dislocation of their cultures, the newly formed federal government denied to the tribes the right to trade with whomever

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they would, imposing upon the tribes monopolistic and oppressive trade restrictions in the form of the Indian Trade and Intercourse Acts. These trade restrictions were touted as necessary to protect the tribes and their members from the excesses and abuses of the colonial traders. They were probably necessary for that purpose, but were far more important as part of the fledgling nation's efforts both to exert control over the acquisition of Indian lands, and to capture the economic benefit from trade with the Indian tribes.

Felix Cohen, the father of federal-Indian law, observed in 1942, that these early trade policies were to become "the guiding motif of federal legislation on Indian affairs." They set, moreover, the stage for the economic destiny of Indian tribes for the next two hundred years. At the heart of the policies was the licensing of Indian traders as the exclusive agents of trade with the Indian nations. This practice created a system of monopolies on Indian reservations that would become notorious for their corruption and infamous for their exploitation of the very people they were created to protect. But of more lasting concern is that they created an economic context that has suppressed Indian economic and business development for more than two centuries.

Apart from the extraction of mineral and timber resources, most Indian reservations find themselves largely without any appreciable economic or business development. These same reservations usually have, however, neighboring border towns whose economies are thriving on income from reservation sources. Yet, efforts to establish similar economies within the boundaries of those reservations have, with few exceptions, consistently failed.

There is, nonetheless, a new spirit in Indian country which embraces the necessity of economic success as an essential component of true self-sufficiency. Faced with declining federal support for essential programs and an increasing federal reluctance to discharge its trust responsibility, tribes are looking to more local and more dependable sources of revenue. As with other governments, those revenue sources are far more likely to come from solid and dependable economic sectors growing within the boundaries of the reservation than from federal sources that may be cut off at the whim of a new policy or executive.

It is against this backdrop that NARF has launched its Indian Economic Development Law Project.

**The Basis and Focus for the Project**

In order to make a meaningful contribution the Project needed to avoid duplication of services already available to tribes from other sources. It was necessary, therefore, to talk with those people from other groups who are working on national efforts in economic and business development in Indian country. These conversations led to the development of three basic premises that guide the Project's work plan. The three premises are:

1. Any economic development strategy must meet the needs of the particular community for which it is designed and is, therefore, a site and context specific effort;
2. There are numerous individuals and institutions already providing an array of economic and business development services tailored to Indian Country; and
3. The Project should focus on those areas of unmet need which complement or support existing services, consistent with the mission of NARF and the spirit and intent of the Project grant.

These principles form the basis for the focus and direction of NARF's new economic development initiative. In addition, there is a recognition that the economic development needs of any community include a broad range of important elements. In most communities these include, among others: commerce (a basis for the sale or trade of goods and services); community

infra-structure (roads, sewers, power, recreational facilities, health and educational facilities, etc.); business development (shopping centers, office buildings, motels, restaurants, etc); public works (sewage treatment plants, road maintenance, etc.); and tribal governance (police protection, courts, administrative agencies, etc). Obviously no one project could address the full range of these concerns. It was important, therefore, to provide a narrow enough focus to the Project to allow for a genuine contribution.

**Identifying the Specific Needs of Tribes and Individuals**

Understanding that the NARF Project could not reasonably take on the whole range of issues identified above, it was important that NARF focus its efforts where they would do the most good. In order to do that, and to avoid duplication of effort, it was necessary to understand both where others were directing their efforts and where the experts in the field felt there was the most critical unmet need.

Five areas were identified as having the greatest need for assistance and expertise. They include: development of tribal governance infrastructure; development of legislative and policy directions that would foster development; assisting in the networking of existing services; provision of a communications link between tribes and business interests; and supporting the development of a large pool of available legal expertise in the Indian economic development area. Following is a brief dicussion of each of these areas.

1. **Development of Tribal Governance Infrastructure**. Many tribes need more or better laws designed to support business and economic development within their jurisdictions. There is also a need for the development of the courts and administrative agencies necessary for the administration and enforcement of commercial laws. Most do not have many commercial, business, public works, or zoning laws. Where such laws are in existence (eg., business regulation codes, consumer codes, etc.) there is frequently no administrative structure to implement or manage them. Developed case law seldom exists to explain the meaning of statutes or regulations. Finally, the procedural rules of the courts are often inadequate for the more technical process necessary to implement new laws regulating commercial transactions (eg., foreclosure or garnishment statutes, etc.).

2. **Looking to Future Legislative and Policy Developments.** Congress, the administration and funding agencies have never been more active in the field of Indian business and economic development. Major changes in and additions to existing law have already taken place. More changes and additions are up for consideration in the 101st Congress. The Interior Department has engaged in major studies on reservation economies. The Defense and Commerce Departments are becoming more aggressive in seeking enforcement of existing laws and regulations designed to assist minority and Indian businesses. Private foundations and corporate America have indicated increased interest in the area of Indian economic development. Federal funding, however, is falling. With fewer federal dollars available the allocation of these more limited funds will be an all important issue. It is essential that representatives of Indian interests have direct input into the decisions that will be made. These decisions will have significant impacts on the lives of Indian people for at least the next decade.

3. **Assisting in the Networking of Existing Resources.** Many tribes have already taken significant steps down the road to self-sufficiency. Some of these tribes have in-house counsel who are anxious to access the knowledge and experience of others and to share their own knowledge and experiences in this area. Apart from occasional seminars or conferences, there is no systematic way to access and share such information on an on-going basis. Some of these attorneys are

seeking an organized and on-going opportunity to access and share information through regular meetings or a national organization. There may also be value in a newsletter or similar periodic publication to such a group that would facilitate networking opportunities.

4. **Providing a Communications Link Between Tribes and Companies Seeking to Do Business on Reservations.** One of the key ingredients in business development is the facilitation of basic communications between the business and Indian communities. Businesses are sometimes reluctant to consider business ventures in reservation settings because they have inaccurate stereotypes and information about doing business in Indian country. Tribes, on the other hand, need a better understanding of the necessity to remove business interests from the arena of political patronage and to provide a supportive business environment. While this communications function is often fulfilled by consultants or counsel for the tribes, it is not generally identified by lawyers as a discreet and important function.

5. **Development of Legal Expertise in the Area of Indian Economic Development.** There is a need for more lawyers skilled in both federal-Indian law and basic business law. Much like the situation in the early 1970's when there was a need to expand the base of attorney's knowledge in federal-Indian law, there is a need to develop expertise in the area of Indian economic and business development to be available on a broad basis in Indian country. These attorneys are needed for all of the issues identified above as well as to serve as legal counsel in direct negotiations on behalf of tribes in securing the business opportunities the tribes need and want.

## NARF'S PROJECT APPROACH

NARF has a history steeped in the direct representation of tribes. This same approach will be an important part of NARF's Project strategy. Project cases will be selected in the same manner as all NARF cases are selected, with the emphasis on viability and significance. In addition, the Project will work with existing resource groups to devise a more efficient method of networking all of our resources in order to more effectively serve the needs of tribes and individual Indian people.

An effort will be made to identify or create an efficient method of gathering and publishing economic and business development information for tribal representatives working on development issues. The Project will also participate in the national debate that will set the agenda for the future of economic development efforts and opportunities in Indian country.

Economic development is, of course, complicated and requires the talents and skills of many professions. When a tribe or Indian community is faced with the chore of creating an economic development plan, several different issues must be addressed. Such an effort requires, among others, a planner, a community process facilitator, an attorney, a financial expert, a community developer, and a business developer. While some individuals incorporate more than one of the foregoing skills, no one is an expert in all of them. Clearly, most tribes cannot begin to afford to hire, either in-house or under contract, all of these experts on a continuous or even consecutive basis. The compromise is usually to retain someone with two or three of the needed skills and try to get along without the rest.

Those organizations that work directly with a tribe or an individual Indian are also faced with not having all of the experts on staff that are needed for a particular project. They often try to provide the missing expertise by stretching their own existing resources. This is frequently not adequate. It is certainly not optimum. The following three strategies constitute a suggested approach for optimizing existing resources to meet this range of needs.

1. **Task Force Networking**

Taken together, existing programs cover most of the range of disciplines needed to accomplish economic development goals. At present, however, these groups work together on an ad hoc basis. It would be far more effective to bring them together in appropriate configurations to address the full array of issues a tribe or community defines as its needs. This teaming of organizational strengths will require a significant level of communication and coordination among those agencies presently offering various services to Indian individuals and communities. It will also require a sufficient commitment from each agency, in coordination with other involved groups, to support a particular project or plan through to its resolution.

The Project's role will be to contact available institutions to determine their assessment of the teamworking concept and, if appropriate, to arrange a meeting to present the concept in greater detail and to determine the level of potential commitment. Assuming an acceptable level of interest, NARF would provide some early coordination until the process proved workable without micro-management. Early indications are that there is sufficient interest in the concept to pursue a time and place to meet.

2. **Information Networking**

As indicated earlier, many reservation-based attorneys are anxious to access the experience and knowledge of others who have done work in the field. While most of this community is generally aware of one another and the work they are doing, they lack more specific information and a more systematic opportunity to utilize the experience and research already accomplished.

Once again, the Project's role would be one of facilitating the opportunity for interested parties to get together to form a plan for cooperation. The Project may also serve in the early days as an organizational focal point until the process can take on a self-generating mode. Other functions such as a newsletter, would be explored to assess both viability and value.

3. **Direct Representation**

In order for the Project to be grounded in reality, direct involvement with specific efforts by tribes and Indian communities must be part of the effort. Selection of clients will follow the same guidelines used by NARF in selecting all of its clients with the emphasis on significance and viability. Assuming the viability of the resource group networking approach discussed above, that process should produce an additional pool from which clients would be recruited.

**Conclusion**

The need for extensive economic and business development in Indian Country has long been recognized. Tribes and individual Indian people are devoting more and more of their resources and energy toward building the economically strong communities that will be necessary to sustain their societies into the next century. As they undertake this enormous task there will be an extensive and increasing need for financial, community, and legal assistance. The Indian Economic Development Law Project at NARF hopes to play a vital and unique role in assisting tribes to address their legal needs and to facilitate the tribe's ability to access the full range of support they will need to accomplish this critically important undertaking.

# National Support Committee Adds Two New Members

Louise Erdrich and Michael Dorris were recently named to NARF's National Support Committee. Erdrich and Dorris are married and have six children. Following are profiles of the two new members.

Erdrich was born in Wahpeton, North Dakota, in 1954, where both her parents taught at the Wahpeton Indian School. Her grandfather, Patrick Gourneau, was for many years Tribal Chairman of the Turtle Mountain Reservation. She was educated at Dartmouth and Johns Hopkins, and was editor of The Circle, the newspaper of the Boston Indian Council, and was a Poet in the Schools in North Dakota. She is the author of a book of poetry, Jacklight, and three novels, Love Medicine (which won the National Book Critics Circle Award for the Best Work of Fiction, 1984, as well as the Los Angeles Times prize for fiction), The Beet Queen (1986), and Tracks (1988).

Dorris founded the Native American Studies Program at Dartmouth college in 1972, and is now a full professor there. Born in 1945, he was educated at schools in Kentucky and Montana, and at Georgetown and Yale Universities. In 1985 he was awarded the Indian Achievement Award by the Illinois Indian Council Fire. He is the author of several books of non-fiction, Native Americans: 500 Years After (1977), A Guide to Research on North American Indians (1980), Blue Water (1987), which has been translated into eleven languages. He has written articles dealing with Indian land claims issues in Alaska and Minnesota, and is a member of the Smithsonian Council.

# New Book Provides Analysis of Public Interest Law

The newly-released **Liberty and Justice for All** reports the results of a recent study conducted by the Alliance for Justice, and presents a comprehensive analyis of the development of public interest law. The Native American Rights Fund is a member of the Alliance for Justice consortium and was one of the groups interviewed and evaluated in the survey.

**Liberty and Justice for All** offers an overview of the history, organization and accomplishments of public interest legal programs. It also describes the broad range of citizen legal organizations that exist and their techniques of advocacy, explores the extent to which they have been able to broaden their bases of financial support, outlines the evolution of legal strategies, and discusses the institutionalization of the public interest law movement.

The book concludes with recommedations for innovative campaigns for fundraising and for increasing citizen participation in the formulation of public policy. It is available for $30.00 from the Alliance for Justice, 600 New Jersey Avenue, N.W., Washington. D.C. 20001 (202/662/9548)

## NARF Selects New Board Member

Eddie Tullis, Chairman of the Poarch Band of Creek Indians, was recently named to the NARF Board of Directors. Mr. Tullis has been an active member in the tribal community as well as with American Indian organizations. He has served as tribal chairman for over 13 years. His other activities include: National Congress of American Indians; National Advisory Council of Indian Education; American Indian and Alaska Native Advisory Committee; American Indian Employment and Training Coalition and Americans for Indian Opportunity; and United South and Eastern Tribes currently serving as vice-president. Mr. Tullis is employed with the Monsanto Corporation and attended James H. Faulkner State College in Alabama.

# Case Updates

**Statute of Limitation Does Not Stop the Catawba Tribe From Pursuing Land Claim.**

On January 23, 1989, the U.S. Court of Appeals for the Fourth Circuit ruled that the South Carolina statute of limitations does not bar the Catawba Tribe from pursuing its claim to 225 square miles in and around Rock Hill, South Carolina. The ruling means that the Tribe's claim is still valid against all persons who claim title to the Tribe's lands until each defendant comes into court and proves that the land they claim has been held adversely for a continuous 10 year period between 1959 (the effective date of the termination act) and 1980 (when the Tribe filed suit). The case has been sent back to the Federal District for South Carolina for trial. Defendants have stated that they will ask the Supreme Court to review the Fourth Circuit's ruling. NARF represents the Catawba Tribe.

**Court Rules Tax Challenge Must Proceed in Tribal Court**

The Kluti Kaah Native Village of Copper Center adopted a business activity tax in 1986. It imposed a 5% tax on gross receipts of all who do business within the Tribe's territorial jurisdiction. Certain oil companies sued Kluti Kaah in federal district court alleging that it was not a federally recognized tribe and thus lacked taxing authority. The oil companies also alleged that the territory in which the tax was imposed was not "Indian country" as defined by federal law. The oil companies moved for summary judgement on these issues - in effect asking the court to rule as a matter of law that the Kluti Kaah had no authority to impose the tax. *In Aleyeska Pipeline Service Co. v. Kluti Kaah Native Village of Copper Center*, Kluti Kaah argued in response that it was federally recognized and that under *National Farmers Union Insurance Co. v. Crow Tribe,* any challenge to tribal jurisdiction must first be made in the available tribal forum.

In a ruling issued on March 6, 1989 the district court denied the oil companies Motion for Summary Judgement, stating that: "The court is simply not convinced that Kluti Kaah cannot possibly be a tribe." The court also noted that even if the tribe has not been federally recognized, they may still be a tribe. The court held that it has authority to determine whether Kluti Kaah is a tribe and that if the tribe prevails on that issue any further challenge to the tax must proceed initially in tribal court.

**Eighth Circuit's Adverse Decision Divests Tribal Court of Jurisdiction**

In *Parisien v. Twin City Construction Co.* the full ten-judge Court of Appeals for the Eighth Circuit reviewed a case of whether the Turtle Mountain Tribal Court has jurisdiction over a lawsuit by a tribal member against a non-Indian doing business on the Reservation. The ten-judge Court was split 5-5 on the decision. The split decision affirms an earlier decision that the tribal court lacks jurisdiction over the lawsuit. An appeal to the U.S. Supreme Court is planned. NARF represents the tribal member in the Supreme Court appeal.

## NATIVE AMERICAN RIGHTS FUND

The Native American Rights Fund is a nonprofit organization specializing in the protection of Indian rights. The priorities of NARF are: (1) the preservation of tribal exsitence: (2) the protection of tribal natural resources; (3) the promotion of human rights; (4) the accountability of governments of Native Americans; and (5) the development of Indian law.

Our work on behalf of thousands of America's Indians throughout the country is supported in large part by your generous contributions. Your participation makes a big difference in our ability to continue to meet ever-increasing needs of impoverished Indian tribes, groups and individuals. The support needed to sustain our nationwide program requires your continued assistance. Requests for legal assistance, contributions, or other inquiries regarding NARF's services may be addressed to NARF's main office: 1506 Broadway, Boulder, Colorado 80302. Telephone (303) 447-8760.


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